

BEFORE THE FOREST PRACTICES APPEALS BOARD
STATE OF WASHINGTON

PACIFIC DENKMANN COMPANY
Dba PILCHUCK TREE FARM,

Appellant,

v.

STATE OF WASHINGTON,
DEPARTMENT OF NATURAL
RESOURCES,

Respondent.

FPAB NO. 05-009

ORDER GRANTING
SUMMARY JUDGMENT
TO RESPONDENT

This is an appeal filed by Pacific Denkmann Company dba Pilchuck Tree Farm (Pilchuck) challenging Respondent Department of Natural Resources' (DNR) denial of Forest Practices Application No. 2808043 on October 24, 2005. DNR, through its attorney Martha F. Wehling, Assistant Attorney General, comes before the Forest Practices Appeals Board (Board) on a Motion for Summary Judgment filed on June 15, 2006 requesting dismissal of the appeal. On July 3, 2006, Pilchuck filed a response to the Motion for Summary Judgment through its representative, Allen Staringer, Manager of Pilchuck Tree Farm, in the form of a letter. On July 13, 2006, DNR filed a Reply Brief in Support of its Motion for Summary Judgment. The Board heard oral argument from the parties on August 2, 2006. Board members Tom May, Chair, John Giese, Member, and Joel Rupley, Member, deliberated on the motions. Cassandra Noble, Administrative Appeals Judge, presided for the Board. Randi Hamilton of Gene Barker &

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1 Associates in Olympia WA recorded the proceedings. The record considered in deciding this
2 motion included the pleadings and other motion papers contained in the Board file, including the
3 following:

- 4 1. Department of Natural Resources' Motion for Summary Judgment and
Memorandum in Support;
- 5 2. Declaration of Brendan Brokes (June 12, 2006);
- 6 3. Declaration of Todd Olson (June 12, 2006) with attachments A through H;
- 7 4. Declaration of Martha F. Wehling (June 13, 2006) with attachments;
- 8 5. Letter of response for Pilchuck Tree Farm from Allen Staringer, Manager
(June 29, 2006);
- 9 6. Department of Natural Resources' Reply Brief in Support of its Motion for
Summary Judgment; and
7. Second Declaration of Martha F. Wehling with attachments.

10 **FACTUAL BACKGROUND**

11 Pilchuck submitted Forest Practices Application/Notification (FPA) No. 2808043 to DNR
12 on October 24, 2005 for approval of a 15-acre even-aged harvest on its property in Snohomish
13 County. The application listed Allen Staringer as the contact person for Pacific Denkmann
14 Company, listed as the landowner, the timber owner, and also the operator for the proposal.
15 *Decl. of Olson, Attachment A, p.1.* Included with Pilchuck's application was a DNR Activity
16 Map of the area including notations added by Pilchuck to show the proposed harvest area, water
17 bodies, proposed buffers, topography, elevations, etc. Pilchuck's proposed no-cut buffer for the
18 pond, the streams, and the wetland on the property was 50 feet. *Decl. of Olson, Attachment A,*
19 *p.5.* DNR has classified the pond as a Type 3 (F) water based on the physical criteria of the
20 water body. The pond is shown on the Activity Map as larger than 0.5 acres at seasonal low
21 flow. Type 3 waters require a 140 foot riparian management zone. *Declaration of Brokes, WAC*

222-16-010 “Riparian management zone” (1) (a). In this appeal, Pilchuck disputes the typing of the pond and other water bodies. DNR contends that the pond should be considered a Type 3 water unless possible fish use can be definitively ruled out by testing. Pilchuck argues that the pond and other water bodies are not fish bearing and should not be characterized as fish habitat.

In the remote location of the proposed harvest in FPA No. 2808043, there are several water bodies, not all showing on the Activity Map. Near the northwest boundary of the harvest area, an unmapped stream flows out of an approximately 2.3 acre pond and into an approximately 30-foot waterfall. The pond is connected to a wetland, forming one open water wetland at least 8 acres in total surface area. The wetland and pond drain to the north over the waterfall into a fish stream that is a 600 foot long tributary flowing northeast into Type 3 waters. The 8-acre wetland is divided into several sections by beaver dams which apparently span its width, giving the pond/wetland complex several elevations. These dams are fish passable so that, if fish have access to one part of the wetland complex, they can be in all parts. The Washington Department of Fish and Wildlife (WDFW) considers the proposed harvest area pond and wetland complex to be “probably excellent fish habitat,” and also that there is a possibility, although not confirmed, that the entire pond-wetland complex is on a divide, which would make it drain in two directions. This would provide fish access from the southeast, and not only from the north where there is the waterfall. *Decl. of Olson, Attachment D., Hennick letter, p. 1.* An unmapped stretch of stream about 30 feet long lies between the pond and the waterfall and connects to a Type 3 stream flowing downstream from the waterfall. *Decl. of Olson, p. 2.*

1 A Type 3 water in interim regulations (called a “Type F” water in the permanent
2 regulations) is presumed to contain fish if it has certain characteristics. A pond having a surface
3 area greater than 0.5 acres at seasonal low water is a Type 3 (F) water. WAC 222-16-
4 031(3)(b)(I)(D). The pond on the proposed harvest area for FPA 2808043 is classified as a Type
5 3 water. None of the water bodies on the proposed harvest site has been tested for fish using the
6 standard protocols. In the absence of a specific study ruling out fish use of the pond or the other
7 water bodies, DNR and the WDFW have determined that the Type 3 designation should not
8 change.

9 DNR has established Guidelines for Determining Fish Use for the Purpose of Typing
10 Waters (Guidelines) in the Forest Practices Board Manual. The Guidelines allow for the
11 opportunity to determine actual fish use for water typing and for changes in water typing in
12 accordance with WAC 222-16-031(3). The purpose of the Guidelines is to provide an
13 understandable mechanism and protocol to make or change water type determinations in
14 connection with forest practices and habitat management. If a forest practices applicant
15 disagrees with the established water type at a particular location, the Guidelines provide a
16 process for requesting a change. “A uniform stream survey protocol is provided so data may be
17 collected such that affected landowners and other interested parties can provide information
18 necessary to refute the presumption of fish presence (Type 3 Water) or the presumption of fish
19 absence (Type 4 or 5 Water).” *Decl. of Olson, Attachment F, p.1.* The Guidelines require survey
20 information beyond visual methods. They require survey information collected by “qualified

1 trained staff” (specifically defined and described in the Guidelines) and the use of scientific
2 methodology. *Decl. of Olson, Attachment F.* Pilchuck did not make a water type change
3 proposal or request, and did not use the protocols provided in the Guidelines. DNR provides an
4 official form specifically for proposals for water type modifications and changes. The detailed
5 form provides example responses and references to pertinent regulations and the Guidelines.
6 Pilchuck did not submit a Water Type Modification Form or request modification or change of
7 water type. *Decl. of Olson, Attachment H.*

8 WAC 222-16-031 sets forth an interim water typing system, and procedures to follow
9 when a dispute is raised and an adopted water type is contested. If fish use has not been
10 determined using the requirements set forth in the Guidelines, waters having certain
11 characteristics must be presumed to have fish use. Ponds of impoundments having a surface area
12 greater than 0.5 acres at seasonal low water are presumed to have fish use. *WAC 222-16-*
13 *031(3)(b)(i)(D).* The pond located on the proposed harvest area is larger than 0.5 acres at
14 seasonal low flow, making it a Type 3 Water. *Decl. of Olson p. 2.* Pilchuck does not dispute
15 DNR’s evidence as to the size of the pond.

16 DNR received Pilchuck’s FPA No. 2808043 on October 24, 2005, and commenced its
17 review of the proposal. Forest Practices Forester, Todd Olson, was assigned to review the
18 application. In conducting his review of FPA No. 2808043, Olson reviewed aerial photos, Forest
19 Practice Activity Maps produced directly from the Forest Practices Application Review System
20 (FPARS), and conducted a site visit. *Decl. of Olson, p. 2.* On November 2, 2005, Olson visited

1 the site with Doug Hennick, a biologist from the WDFW. Allen Staringer met them on site on
2 behalf of Pilchuck. They visited the waterfall and agreed that it was a natural barrier to fish.
3 Olson invited Staringer to join them in walking the site to look at the pond, but Staringer
4 declined and left to attend to other company business. *Decl. of Olson, p. 2.* Following the site
5 visit, the biologist Hennick wrote a letter to Olson summarizing his observations and conclusions
6 about the site as to its fish habitat classification. *Decl. of Olson, Attachment D, p.1.*

7 After the November site visit with Hennick and Staringer, Olson attempted to contact
8 Pilchuck by leaving two messages for Staringer on November 2 and 9, 2005. Mr. Staringer did
9 not return Olson's voice mail messages. Olson waited just over a week for a response from
10 Staringer but did not receive a return phone call. On November 18, 2005, Olson submitted a
11 Notice of Decision, accompanied by an explanatory disapproval letter. *Decl. of Olson,*
12 *Attachments B and C.* Olson explained that the FPA was disapproved for the following reason:
13 "[t]he water type assessment associated with the pond was not accurately addressed in the
14 submitted FPA. The aforementioned water type clarification should be addressed if you choose
15 to resubmit the FPA." *Decl. of Olson, Attachment B.* In his letter to Staringer, Olson explained
16 that the pond was mapped as, and met the physical characteristics for, a Type F (3) water since
17 its surface area is at least one half acre at seasonal low water, and that "the water type assessment
18 associated with the pond was not accurately addressed in the submitted FPA." Olson explained
19 the requirements for obtaining a water type change, including the need for a protocol survey to
20 disprove the presence of fish, or information indicating concurrence with WDFW, the

1 Department of Ecology, and affected tribes supporting a departure from the characteristics of a
2 Type 3 water. Olson also informed Pilchuck of the option of re-submittal of the FPA should
3 Pilchuck obtain either the protocol survey or agency concurrence indicating an absence of fish.
4 The letter offered a telephone number for assistance if Pilchuck did want to re-submit the FPA.
5 Pilchuck did not obtain a survey or agency concurrence, and did not re-submit the FPA. *Decl.*
6 *of Olson, Attachment C.*

7 Under certain circumstances, it is possible that the characteristics set forth in the WAC
8 for water typing may be waived. Where sufficient information about a geomorphic region is
9 available to support a departure as determined in consultation with the WDFW, the Department
10 of Ecology, affected tribes and interested parties, DNR may waive or modify characteristics
11 requiring the presence of fish use. WAC 222-16-031(3)(b)(ii)(C). In the context of FPA No.
12 2808043, or in two on-site meetings with agency representatives, Pilchuck did not request a
13 waiver or modification of the water typing characteristics, and did not present information to
14 DNR from qualified, trained individuals to refute the presumption of fish use. On the first visit,
15 Allen Staringer declined to accompany the DNR representative to the pond. On the second visit
16 to the site in January with other agency representatives, Allen Staringer did not agree or disagree
17 that the waters on site met the physical characteristics of a Type 3 water. *Decl. of Olson, p. 3.*

18 Pilchuck argues that it is not possible for fish to be in the pond because of the waterfall
19 barrier and Staringer stated in his motion response letter to the Board that he has never
20 personally observed fish there. The DNR Guidelines address the issue of blockages to fish

1 passage. They recognize that natural barriers consisting of waterfalls greater than twelve feet in
2 vertical height generally block upstream migration of anadromous fish. Resident fish, on the
3 other hand, frequently exist upstream of such a blockage, so the mere presence of a natural
4 barrier is not proof of fish absence. *Decl. of Olson, Attachment F, p3.* WDFW Assistant
5 Regional Habitat Program Manager Brendan Brokes attended a January 19, 2006 informal
6 conference at the proposed harvest site with Staringer representing Pilchuck, and seven other
7 agency representatives from DNR, Ecology, the Tulalip Tribe, the Stillaguamish Tribe, and the
8 Attorney General's Office. Brokes concluded that, despite the presence of the waterfall, resident
9 fish could live in the stream, pond, or wetlands upstream of the waterfall because fish may be
10 present above a natural barrier due to earth movements such as an upward shift creating a
11 waterfall. Other contributing factors to the possibility of the presence of fish could be glacial
12 retreat, geologic changes isolating waters that used to be connected, stocking by prior
13 landowners or stream channel movements. *Decl. of Brokes, p.2.*

14 After walking the entire site in January, the agency representatives concurred that the
15 pond met the physical characteristics of a Type 3 water as defined in WAC 222-16-
16 021(3)(b)(i)(D). They agreed that the stream flowing from the pond to the waterfall also met the
17 physical characteristics of a Type 3 water up to the point of the waterfall, which was a natural
18 barrier. *Decl. of Olson, Attachment E, Informal Conference Note.* WDFW Fish Habitat Program
19 Manager Brokes agreed with DNR, the Department of Ecology, and the Tulalip Tribe's
20 representative that, based on the physical characteristics of the water bodies on the property, they

1 were properly typed as 3 (F). At the site, Brokes also talked to Allen Staringer about what would
2 be involved in working with WDFW to create a protocol survey. Brokes explained that, due to
3 the complexity of the water bodies on site, it would be hard to electroshock for fish, but that
4 there are other methods for determining fish presence, including hook and line sampling,
5 snorkeling, gillnetting, visual observation, trapping, and feeding. Brokes referred Staringer to
6 the Forest Practices Board Manual recommendations for fish surveying. Pilchuck did not initiate
7 the process for challenging the water typing on the property or for determining whether a waiver
8 of the characteristics requiring the presumption of fish use. *Decl. of Olson, Decl. of Brokes, p.2.*

9 Pilchuck appealed DNR's disapproval of FPA No. 2808043 by letter filed on December
10 2, 2005.

11 **ISSUE**

12 The sole issue in this case is whether DNR properly disapproved FPA No. 2808043 as
13 being inaccurate and incomplete pursuant to the Forest Practices Act and rules.

14 **ANALYSIS**

15 **A. Summary Judgment Standard**

16 Summary judgment is a procedure available to avoid unnecessary trials on formal issues
17 that cannot be factually supported and could not lead to, or result in, a favorable outcome to the
18 opposing party. *Jacobsen v. State*, 89 Wn.2d 104, 569 P.2d 1152 (1977). The summary
19 judgment procedure is designed to eliminate trial if only questions of law remain for resolution.
20

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Summary judgment is appropriate when the only controversy involves the meaning of statutes, and neither party contests the facts relevant to a legal determination. *Rainier Nat'l Bank v. Security State Bank*, 59 Wn.App. 161, 164, 796 P.2d 443 (1990), review denied, 117 Wn.2d 1004 (1991).

The party moving for summary judgment must show there are no genuine issues of material fact and the moving party is entitled to judgment as a matter of law. *Magula v. Benton Franklin Title Co., Inc.*, 131 Wn.2d 171, 182; 930 P.2d 307 (1997). A material fact in a summary judgment proceeding is one that will affect the outcome under the governing law. *Eriks v. Denver*, 118 Wn.2d 451, 456, 824 P.2d 1207 (1992). In a summary judgment, all facts and reasonable inferences must be construed in favor of the nonmoving party as they have been in this case. *Jones v. Allstate Ins. Co.*, 146 Wn.2d 291, 300, 45 P.3d 1068 (2002).

B. Forest Practices Act Water Typing Requirements

The Forest Practices Act is a statewide system of laws designated to manage and protect the State's natural resources and to ensure a viable commercial timber industry. RCW 76.09.010(1). Forest operators and landowners are required to submit forest practices applications and comply with the terms of approval of those applications. *See RCW 76.09.060; WAC 222-20-060*. A forest practice application (FPA) must be either approved or disapproved by DNR within 30 days of its receipt by the agency. RCW 76.09.050; WAC 222-12-030(3).

The stream located on the north side of the harvest boundary in FPA No. 2808043 is classified as Type 3 (F), which means that it is presumed to contain fish. WAC 222-16-031(3).

1 DNR has prepared water type maps showing the locations and designations of waters. The maps
2 were prepared in consultation with the departments of Fish and Wildlife and Ecology, and in
3 consultation with affected Indian tribes to classify streams.¹ When FPA No. 2808043 was
4 submitted for review, the fish habitat water type maps described in DNR rules (WAC 222-15-
5 030) were not yet adopted by the Forest Practices Board, so DNR was using the interim water
6 typing system that used numbers to designate the water types. WAC 222-16-031. However,
7 although the maps are new, the same forest practices rule that was in place with the previous
8 typing designations (WAC 222-16-031) is used to define and describe the characteristics of the
9 water types themselves. The Type 3 designation is now called “Type F” (fish). DNR defines
10 Type 3 Waters as

11 ... segments of natural waters which are not classified as Type 1 or
12 2 Waters and have a moderate to slight fish, wildlife, or human
13 use. These are segments of natural waters and periodically
14 inundated areas of their associated wetlands which:

15 (b) Are used by fish for spawning, rearing or migration. The
16 requirements for determining fish use are described in the board
17 manual section 13. If fish use has not been determined:

18 (i) Waters having the following criteria are presumed to have
19 fish use:

20 (A) Stream segments having a defined channel of 2 feet or
21 greater within the bankfull width in Western
Washington; or 3 feet or greater in width in Eastern
Washington; and having a gradient of 16 percent or
less;

¹ DNR has now changed the statewide water typing system from the original Types 1, 2, 3, 4 & 5 streams to Types S, F, Np & Ns streams. Effective March 1, 2006, DNR implemented the improved maps statewide.

- (B) Stream segments having a defined channel of 2 feet or greater within the bankroll within in Western Washington; or 3 feet or greater within the bankfull width in Eastern Washington, and having a gradient greater than 16 percent and less than or equal to 20 percent, and having greater than 50 acres in contributing basin size in Western Washington or greater than 175 acres contributing basin size in Eastern Washington, based on hydrographic boundaries;
- (C) Ponds or impoundments having a surface area of less than 1 acre at seasonal low water and having an outlet to a fish stream;
- (D) Ponds of impoundments having a surface area greater than 0.5 acre at seasonal low water.

(ii) The department shall waive or modify the characteristics in (i) of this subsection where:

- (A) Waters have confirmed, long term, naturally occurring water quality parameters incapable of supporting fish;
- (B) Snowmelt streams have short flow cycles that do not support successful life history phases of fish. These streams typically have no flow in the winter months and discontinue flow by June 1; or
- (C) Sufficient information about a geomorphic region is available to support a departure from the characteristics in Ii) of this subsection, as determined in consultation with the department of fish and wildlife, department of ecology, affected tribes and interested parties.

WAC 222-16-031(3)(b)

C. Challenging a Determination of Fish Use

The presumption of the presence of fish can be challenged, but the burden of so doing rests with the challenger. In this case, there were several opportunities for Pilchuck to claim a

1 waiver of the water typing characteristics that were not taken. The DNR and WDFW made
2 Pilchuck aware directly of the process required in the Board manual to permanently change the
3 water typing of the water bodies within the proposed harvest site. This process was, and still is,
4 available to Pilchuck, but, until the water typing is permanently changed through the established
5 procedure, a presumption of fish in the Type 3 waters is required. Type 3 waters require a
6 Riparian Management Zone of 140 feet. WAC 222-16-010 “Riparian Management Zone” (1).
7 Therefore, 50-foot buffers are not adequate.

8 Pilchuck argues that the multi-agency conference held at the proposed harvest site in
9 January should have been held within the 30-day approval window. No authority has been
10 provided for this assertion. DNR is required to approve or disapprove a forest practices
11 application and notify the applicant in writing of the decision and the specific manner in which
12 the application fails to comply with applicable statutes and regulations. If DNR fails to either
13 approve or disapprove an application within the applicable time limit, the application shall be
14 deemed approved and the operation may be commenced. RCW 76.09.050(5). The applicable
15 time limit for DNR’s decision on an application is 30 calendar days. WAC 222-20-020(1).
16 DNR has an obligation to make timely decisions on FPAs consistent with its obligations. This is
17 in furtherance of DNR’s duty of DNR to manage forest lands using sound policies of natural
18 resource protection and: “that coincident with maintenance of a viable forest products industry, it
19 is important to afford protection to forest soils, fisheries, wildlife, water quantity and quality, air
20 quality, recreation, and scenic beauty.” RCW 76.09.010(1). Consistent with its duty to balance

1 its management of forest lands, DNR has provided a process to address disputes concerning
2 water typing:

3 If a dispute arises concerning a water type, the department shall
4 make available informal conferences which shall include the
5 departments of fish and wildlife, ecology, and affected Indian
6 tribes and those contesting the adopted water types. These
7 conferences shall be established under procedures established in
8 WAC 222-46-020.

9 WAC 222-16-031.

10 WAC 222-46-020 addresses enforcement proceedings. It requires DNR to afford
11 “reasonable opportunities” to discuss proposed enforcement actions at an informal conference
12 prior to taking further enforcement action unless DNR determines that there may be imminent
13 damage to the public resource. There is no requirement in either statute or rule that requires
14 DNR to conduct an informal conference within the 30- day appeal period. “Informal
15 conferences may be used at any stage in enforcement proceedings...” WAC 222-46-020. In this
16 case, other than placing incorrect buffer widths on the Forest Practice Activity Map, Pilchuck did
17 not communicate in any way to DNR that there was a dispute. DNR did conduct two visits to the
18 site with Pilchuck representative Staringer, before and after the decision on the FPA, and Todd
19 Olson also called Staringer on the phone two times prior to making the decision on FPA No.
20 2808043. Pilchuck did not make a sufficient good faith effort to specifically articulate a dispute
21 with DNR about the water typing, and did not return either phone call. The rule that requires
DNR to make informal conferences available, which it did, but there is no requirement that a
conference occur within the 30-day application review period. WAC 222-16-031.

1 D. No Disputed Issue of Material Fact

2 Pilchuck argues that a genuine issue of material fact has been raised concerning the water
3 typing. *Staringer Response Letter*, p.6. However, Pilchuck's letter was unaccompanied by any
4 sworn testimony or other evidence sufficient to allow the Board to find that a material question
5 of fact existed. A material fact in a summary judgment proceeding is one that will affect the
6 outcome under the governing law. *Eriks v. Denver*, 118 Wn.2d 451, 456, 824 P.2d 1207 (1992).
7 The nonmoving party may not oppose a motion for summary judgment by nakedly asserting that
8 there are unresolved factual questions. *Bates v. Grace United Methodist Church*, 12 Wn.App.
9 111, 115, 529 P.2d 466 (1974). The trier of fact must construe the evidence and consider the
10 material facts and all reasonable inferences therefrom in the light most favorable to the
11 nonmoving party. *Weatherbee v. Gustafson*, 64 Wn.App. 128, 822 P.2d 1257 (1992).

12 The issue in this case is whether DNR properly disapproved FPA No. 2808043.
13 Although Pilchuck raises a dispute to this Board about the typing of the water bodies affected by
14 the FPA, the pertinent facts surrounding the application of the statutes and regulations in the
15 disapproval of the FPA are not disputed. Pilchuck does not deny that it did not seek to change
16 the water typing by filing a Water Type Modification Form and did not use the process set forth
17 in the Guidelines. Pilchuck does not assert that it submitted evidence to DNR from qualified
18 sources as described in the Guidelines that would support a waiver of the characteristics dictating
19 a Type 3 classification, and does not deny that it did not actively participate in the physical
20 inspection of the pond at the visit that occurred prior to the disapproval of the FPA. The

1 established procedure is relatively straightforward. Given Pilchuck's failure to avail itself of that
2 procedure available for resolving water typing disagreement, DNR acted properly in
3 disapproving the FPA.

4 E. Conclusion

5 This Board is not the proper body to make the water typing decisions associated with this
6 FPA. The water bodies in this case had the characteristics that mandated a classification as a
7 Type 3 Water under Washington law. Absent qualified information to support a waiver of that
8 classification, DNR is obligated to presume that the waters are fish habitat and fish use. To
9 make a permanent change in the official water typing of the water bodies at issue, Pilchuck must
10 make a good faith effort and follow the process set forth in the Guidelines by the Forest Practices
11 Board. The applicability of the waiver provisions provided in WAC 222-16-031(3)(b)(ii)(C)
12 should be decided at the administering agency level and decided upon presentation of qualified,
13 scientific survey information before a water typing decision is appealed to this Board. Pilchuck
14 still has the option of submitting a new FPA. The ability to re-submit the FPA provides Pilchuck
15 with a fair opportunity to follow the Guidelines for seeking a change in the water typing, or even
16 to adjust the buffers in the proposed harvest area in accordance with the current water typing of
17 the pond.

Having heard oral argument, reviewed and fully considered the record in this case, based on the foregoing analysis, the Board concludes that summary judgment for Respondent DNR is appropriate. Now, therefore the Board enters the following:

ORDER

Respondent Department of Natural Resources' Motion for Summary Judgment is GRANTED, it's disapproval of Forest Practices Application 2808043 is AFFIRMED, and this appeal is DISMISSED.

SO ORDERED this 12th day of September 2006.

FOREST PRACTICES APPEALS BOARD

TOM P. MAY, Chair

JOEL RUPLEY, Member

JOHN GIESE, Member

Cassandra Noble, Presiding
Administrative Appeals Judge